



Department of Toxic Substances Control



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Agency Secretary
California Environmental
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September 12, 2003

Mr. Jerry Dunaway
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ORIGINAL

FINAL FINDING OF SUITABILITY TO TRANSFER (FOST) FOR A PORTION OF
PARCEL 1 (CARVE-OUT-11) [CO-11] AND PORTIONS OF PARCELS 16, 27, AND 40
(CARVE-OUT-8) [CO-8], FORMER MARINE CORPS AIR STATION (MCAS) TUSTIN,
CALIFORNIA

Dear Mr. Dunaway:

The Department of Toxic Substances Control (DTSC) reviewed the subject document, also known as FOST No. 5, dated 17 December 2002. DTSC received the document on December 20, 2002, after it was signed by the Commander, Captain C. Schanze, on December 17, 2002. The purpose of this FOST is to document the conclusion that the property identified above is suitable for transfer by deed.

DTSC had hoped this final version of FOST No. 5 would appropriately address and incorporate all of DTSC's previously submitted comments, and that the document would be virtually error-free. Unfortunately, this is not the case. While we do have additional comments, which are provided in the enclosure, it does not change our final position on the FOST. DTSC understands that the comments provided in the enclosure will not be incorporated into the FOST because it has already been finalized and distributed. Nevertheless, DTSC chose to take the time to document all of our comments in a effort to demonstrate the continuing problem we have with the quality of these documents. We had hoped to provide these comments to the Navy back in January, unfortunately due to more pressing priorities and staff shortages, we were unable to do so.

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption.
For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at www.dtsc.ca.gov.*

Mr. Jerry Dunaway
September 12, 2003
Page 2

Based on the information provided in the FOST, DTSC is unable to concur with the suitability of CO-8 for transfer. CO-8, specifically portions of Parcels 27 and 40, includes a building (B-303) where potential releases of lead from lead-based paint (LBP) were not evaluated. DTSC considers the presence of exterior LBP, that has been released to the soil, to pose a potential release to the environment pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986. The Department of the Navy (DON) is required to evaluate and address all releases of CERCLA hazardous substances at its facilities, and where property has been transferred under CERCLA 120(h)(3), the DON must covenant that it will perform any remedial action found to be necessary after the date of transfer. In addition, the "DoD [Department of Defense] Policy on Responsibility for Additional Environmental Cleanup after Transfer of Real Property" (DoD Come-back Policy) asserts that DoD will typically utilize the Local Redevelopment Authority's reuse plan as the basis for the land use assumptions that DoD will consider during a remedy selection process. Based upon the date of construction of the building located within CO-8 (portions of Parcels 27 and 40), a potential release to the environment of lead associated with exterior LBP exists. As a result, the DON should verify if LBP is present on the exterior of this building and should conduct soil sampling to determine whether soils surrounding this building contain lead from LBP which may pose a threat to human health or the environment.

DTSC understands that the DON looks to Title X, the Residential Lead-Based Paint Hazard Reduction Act and the joint DoD/United States Environmental Protection Agency (EPA) interim final "Lead-Based Paint Guidelines for Disposal of Department of Defense Residential Real Property - A Field Guide," dated December 1999, to address the hazards posed by LBP. DTSC, however, has not adopted the joint DoD/EPA guidelines and its criteria for evaluating LBP hazards, nor does DTSC believe Title X, the Residential Lead-Based Paint Hazard Reduction Act, relieves the DON of its obligations to adequately characterize property it is transferring. DTSC maintains that lead from LBP is a CERCLA release. Therefore, without site-specific data, DTSC is unable to determine whether, pursuant to CERCLA 120 (h)(3), all remedial actions to protect public health have been taken at CO-8 (portions of Parcels 27 and 40) with respect to potential releases of lead from LBP. In addition, DTSC cannot concur categorically that DON has no future CERCLA liability to evaluate or remediate LBP releases into the soil should such contamination be found.

In addition, former MCAS Tustin is subject to the corrective action requirements of the federal Resource Conservation and Recovery Act (RCRA) and the state Hazardous Waste Control Law. Any transfer of property, if necessary, must comply with the requirements for change of ownership under the hazardous waste laws, including appropriate permit modifications and/or corrective action determinations.

Mr. Jerry Dunaway
September 12, 2003
Page 3

The Navy has committed to conducting the appropriate procedures needed to determine that the Navy's corrective action obligations are complete as stated in the letter from Ms. Laura Duchnak, BRAC Operations Officer, to Mr. Frederick S. Moss, Division Chief, DTSC Permitting Division, dated March 6, 2003. DTSC cannot concur in a finding of suitability to transfer until the necessary determinations are complete.

Based upon DTSC's review of Final FOST No. 5, DTSC submits this letter of non-concurrence for the transfer of CO-8 (portions of Parcels 16, 27 and 40) and CO-11 (portion of Parcel 1). If you have any questions, please contact Ms. Jennifer Rich at (714) 484-5415, or me at (714) 484-5425.

Sincerely,

A handwritten signature in cursive script, reading "Manuel J. Alonzo".

Manuel J. Alonzo, Unit Chief
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Enclosure

cc: See next page.

Mr. Jerry Dunaway
September 12, 2003
Page 4

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Mr. Jerry Dunaway
September 12, 2003
Page 5

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FINAL FINDING OF SUITABILITY TO TRANSFER (FOST) FOR A PORTION OF
PARCEL 1 (CARVE-OUT-11) [CO-11] AND PORTIONS OF PARCELS 16, 27, AND 40
(CARVE-OUT-8) [CO-8], FORMER MARINE CORPS AIR STATION (MCAS) TUSTIN,
CALIFORNIA

GENERAL COMMENT

1. DTSC was surprised to find its comments, sent to the Navy via electronic mail on December 12, 2002, in Attachment 5 of the Final FOST. When DTSC agreed to review and provide comments on the Navy's response to comments (RTCs) dated December 5, 2002, Navy and DTSC discussed whether or not the comments should become part of the Final FOST. It was mutually agreed that the comments would not be included in the Final FOST because they were not comments on the document itself, rather they were comments on the Navy's RTCs. The fact that the comments were included in the Final FOST is not a problem in and of itself, however, it would have been helpful to state that the comments were sent via electronic mail and to provide a brief explanation about the nature of the comments (i.e., DTSC's comments on the Navy's Response to DTSC's Comments on the Draft Final FOST No. 5). Currently, the title states, "Response to Comments Draft Finding of Suitability to Transfer", which is incorrect.

SPECIFIC COMMENTS

1. Page 6, Section 6.1, Carve-Out Area 8

The last sentence, "CO-8 is classified as an Area Type 1", is new language. While DTSC can concur that Mooring Pads 4 and 5 are an Area Type 1, we cannot concur that all of CO-8 is an Area Type 1. CO-8 includes Building 303, which is located on Parcels 27 and 40. Due to the potential for LBP contamination in soil (see DTSC's unresolved comment, Attachment 6, regarding LBP), DTSC cannot concur that CO-8 is an Area Type 1.

2. Page 6, Section 6.2, Carve-Out Area 11

Paragraph 2, Last Sentence states, "This site received regulatory approval for NFA (Attachment 2)." It appears that the "site" is referring to CO-11. If so, this makes for some confusion because the NFA letter(s) are not for CO-11 in its entirety. The NFA letters are for specific areas within CO-11 (i.e., associated piping, various AOCs). Please explain which NFA letter(s) applies here.

Paragraph 3, Last Sentence states, "Based on the analytical results from the final confirmation soil samples collected at these sites, regulatory approval for NFA was received (Attachment 2), and is classified as Area Type 2." The last part of the sentence, regarding the classification as Area Type 2, is new language. It is unclear whether the Navy is classifying the AOCs as Area Type

2, or the entire CO-11 area as Area Type 2. There is actually a mixture of Area Type 1 and Area Type 2 sites within CO-11. Please explain.

3. Pages 6 and 7, Section 7.0, Use Notifications and Restrictions

The last sentence in paragraph 1 currently states, "Table 7 all lists the environmental factors considered." The sentence should read, "Table 7 lists all the environmental factors considered."

4. Page 7, Section 7.2, Notification - Prime/Unique Farmland

DTSC does not believe that the approximate number of acres listed is accurate. The Navy should verify its accuracy.

5. Pages 7-9, Section 7.3, Notification - Pesticides

The information presented in this section should have focused on Parcels 27 and 40. There is currently a lot of information presented that is not pertinent to this particular FOST.

The following references made in this section are not included in Attachment 1 as they should have been: GeoRemediation 1992, BNI 1997b and BNI 1996b.

This section states that the NFA concurrence letter for Parcel D is provided in Attachment 2 and it is not.

This section refers the reader to Attachment 2 for a 15 July 1996 letter which is not there.

6. Page 11, Section 7.6, Notification - Hazardous Substances or Petroleum Products

Paragraph 1 - Please see specific comment #1 above.

7. Table 2, Areas of Concern Within Carve-Out Areas 8 and 11

Why is IRP-7N discussed in the AOC Description column, but not in the AOC Status column? Also, the NFA letter (05/03/01) referenced in the Status Summary column is for IRP-7S (AST 198A/B). Shouldn't the 10/04/02 letter for IRP-7N (AST 194A/B) be referenced instead? If the 05/03/01 NFA letter is not pertinent to the FOST, please remove it from Attachment 2.

Which NFA letter in Attachment 2 corresponds to the "Closure Report: JP-5 pipeline"?

8. Table 5, Fuel System Piping Within Carve-Out Area 11

How does the "Fuel system piping adjacent to Aircraft Apron 1" discussed in this table relate to AOC MFL-1A discussed in Table 2?

The table should state if and when the fuel system piping was removed.

There is a "Note a" at the bottom of the table, but nothing is listed. Note "a" is also not shown in the table.

The information source for the area type (Note b) needs to be explained because Table 5-6 of the EBS is for ASTs.

9. Figure 3, Areas of Concern (AOCs), Aboveground Storage Tanks (ASTs) and Areas of Investigation (AOIs)

"CO-9" was mistakenly left on the figure and should have been deleted.

10. Attachment 3, Petroleum Products Notification Table

"End of Aircraft Apron 1" is listed twice. Please explain.

"End of Aircraft Apron 1" is listed as an AOC in this table, but it is not listed as an AOC anywhere else in the FOST. Please explain.

There is a typographical error in the "Acronyms/Abbreviations" portion of the table.

The date at the bottom of the table is incorrect.

11. Attachment 5, Comments/Response to Comments (First Set, Pages 1-13)

The header is incorrect. It currently reads, "Response to Comments, Draft Finding of Suitability to Transfer, Marine Corps Air Station Tustin, California, 12 November 2002 Comments from: Ms. Jennifer Rich, Remedial Project Manager, DTSC". The document was actually the draft final, not draft. The date of DTSC's letter was November 21st, not November 12th. And finally, DTSC's comments were not only from Jennifer Rich, but also Bob Elliott, Legal Counsel.

Page 3, General Comment 6 - DTSC originally commented that a portion of CO-8 (portion of Parcel 27) should contain a notification for pesticides (FOSL 3).

Based on this comment, the Navy put a pesticide notification in Table 6 for CO-8 (Parcels 16, 27, and 40). In looking at the "Agricultural Areas at MCAS Tustin" figure in FOST 4, it appears that portions of Parcels 27 and 40 are considered agricultural areas but Parcel 16 (portion) is not. The pesticide notification for Parcel 16 should be deleted in Section 7.3 and in Table 6.

Page 4, General Comment 13 - Not only were ASTs 194A and 194B not shown on Figure 8 of FOST 3, but they were left out of FOST 3 all together. There is one exception, however, they were discussed in relation to CO-11 on page 3. In looking at the NFA letter for ASTs 194A/B that is included in FOST 5, it shows a date of October 4, 2002. FOST 3 was finalized on April 22, 2002. FOST 3 should have thoroughly discussed ASTs 194A/B in relation to Parcel 1 and explained that they had not received regulatory concurrence for NFA. Even though ASTs 194A/B have received regulatory concurrence for NFA, DTSC recommends that the Navy make the necessary corrections to FOST 3 and distribute those changes appropriately. This information should have been supplied to the transferee.

Page 5, Specific Comment 4, Paragraph 1- The Navy's response states that "The FOST was revised to incorporate this comment". In fact, the FOST was not revised to incorporate the comment.

Page 5, Specific Comment 5, Paragraph 1 - The Navy's response states that "The FOST was revised to incorporate this comment". In fact, the FOST was not revised to incorporate the comment.

Page 7, Specific Comment 10, First 3 Paragraphs - The Navy's response was, "See comment 12. above." Comment 12 stated, among other things, that "The Navy understands this is an "Unresolved Comment" and it will be attached to this FOST per the BRIM guidelines." This was an appropriate response, however, the comment never made it into Attachment 6, Unresolved Comments. The Unresolved Comment section of the FOST is an important one and it is unfortunate for both DTSC and the transferee that the comment was left out.

Page 7, Specific Comment 10, Paragraph 4 - The Navy's response states that, "The FOST was revised to incorporate this comment." Unfortunately, the comment was not incorporated as requested. The sentence in the FOST now reads, "Attachment 3 is the prior petroleum products notification table." The sentence should read, "Attachment 3 is the petroleum products notification table."

Page 7, Specific Comment 10, Paragraph 6 - The Navy's response states that, "To be consistent with FOST 4, this comment will not be incorporated." While

DTSC is all for consistency between documents, we believe that the proposed change (inserting "notifications and" prior to "restrictions") would have made the sentence more accurate. Both notifications and restrictions are included in the deeds. Therefore, it made sense to state that "All the following *notifications and* restrictions listed below in this section will be incorporated into the deed(s)." It is also important to note that the section contains a number of notifications and only one restriction.

Page 8, Specific Comment 14 - The Navy's response states that, "The FOST was revised to incorporate these comments." Only 2 out of the 3 requested changes were made.

Page 9, Specific Comment 16, Paragraph 2 - The Navy's response states that, "The FOST was revised to incorporate these comments." One out of two requested changes were made.

Page 9, Specific Comment 17, Paragraphs 2 and 3 - The Navy's responses state that, "The FOST was revised to incorporate this comment." Neither of the comments were incorporated as requested.

Page 10, Specific Comment 19, Paragraph 1 - DTSC requested that an NFA closure letter from the RWQCB be provided in Attachment 2 for MFL-1A. The Navy's response was that an NFA letter from the RWQCB dated May 3, 2001 is now in Attachment 2. The letter does not reference MFL-1A in any way. Please explain how this letter relates to the RWQCB closure of MFL-1A. Also, is the October 4, 2002 NFA letter related to MFL-1A?

Page 10, Specific Comment 19, Paragraph 2 - DTSC questioned the Area Type 1 designation of MMS-02 (A,B,C). The Navy responded that the Area Type listed in Table 2 was changed to reflect MMS-02 as an Area Type 2. Unfortunately, the Area Type for MMS-02 (A,B,C) is still incorrectly listed as Area Type 1 in Table 2.

Page 10, Specific Comment 20, Paragraph 3 - The Navy's response states that "The date of August 15, 2002 was included." There was a typographical error and Table 5, Status, now states "Closure report dated Aug 15g '02".

Page 11, Specific Comment 21, Paragraph 2 - DTSC requested that the heading titled "Parcel" be changed to read "Parcel (portion)". The Navy responded, "Change incorporated." However, the heading now reads "Portioins [sic] of Parcels".

Page 11, Specific Comment 21, Paragraphs 3 and 4 - The Navy added a heading titled, "Sections in FOST" but there are a number of sections below it that are not included in *this* FOST.

Page 11, Specific Comment 21, Paragraph 8 - DTSC requested "Parcel 24" be deleted because it was in error. The Navy made the requested deletion, but incorrectly replaced with "Parcel 17/40". It should read "Parcels 27/40".

Page 11, Specific Comment 21, Paragraph 9 - DTSC requested that the asbestos restriction be deleted from the table because there was only a notification listed in the text portion of the FOST. Navy stated that "Change not incorporated, Table 6 title is "Notifications and Restrictions..." However, in looking at Table 6, it now appears that there are no notifications or restrictions listed for asbestos. There should be an asbestos notification listed for Building 303 (Parcels 27 and 40).

Page 11, Specific Comment 21, Paragraph 12 - DTSC originally commented that a portion of CO-8 (portion of Parcel 27) should contain a notification for pesticides (FOSL 3). Based on this comment, the Navy put a pesticide notification in Table 6 for CO-8 (Parcels 16, 27, and 40). In looking at the "Agricultural Areas at MCAS Tustin" figure in FOST 4, it appears that portions of Parcels 27 and 40 are considered agricultural areas but Parcel 16 (portion) is not. The pesticide notification for Parcel 16 should be deleted in Table 6.

Page 11, Specific Comment 21, Paragraph 13 - It appears that the Navy intended to incorporate the change DTSC requested, however, there are now a couple of typographical errors. Instead of reading "AOC's/Areas of Investigation" or "AOCs/AOI's" the title incorrectly reads, "ACO's/Area of Investigation"

Page 12, Specific Comment 24, Paragraph 2 - Only two out of the three requested changes were made.

Page 12, Specific Comment 24, Paragraph 3 - While the missing figure is now included, it is barely legible.

Page 13, Specific Comment 26, Paragraph 1 - While there has been improvement, there are still inconsistencies between text, tables and attachments within FOST 5 which makes for confusion.

Page 13, Specific Comment 26, Paragraphs 4 and 5 - There is still a lack of consistency between Attachment 3 and Table 2. Attachment 3 shows the

"Stored (S), Released (R), or Disposed (D)" column with an "R" for release of aircraft fuel, but Table 2 shows the area type as a 1 meaning no release has occurred.

Page 13, Specific Comment 26, Paragraph 7 - The reference to the EBS, Table F-1 should have been left in for the AOCs. The reference to the EBS, Table 5-6 was only for the ASTs.

12. Attachment 5, Comments/Response to Comments (Second Set, Pages 1-2)

Page 1, Comment 1 - The requested change was not made.

Page 1, Comment 7 - Again, DTSC was requesting a summary of area types for the specific sites (i.e., AOlS, AOCs, etc.), not area types for each carve-out area.

Page 1, Comment 8 - While there has been improvement, there are still inconsistencies between text, tables and attachments within FOST 5 which makes for confusion.

Page 1, Comment 9 - It's good to be consistent, but not consistently wrong. There is one restriction and six notifications listed in Section 7.0. Both notifications and restrictions should be incorporated into the deeds and the text should reflect this information.

Page 2, Comment 11 - Inconsistencies still exist and have been pointed out elsewhere in this comment letter.

3. Attachment 6, Unresolved Comments

One of DTSC's unresolved comments is missing. It was Specific Comment #10 from DTSC's November 21, 2002 comment letter. The comment was as follows:

Because the RWQCB uses other than risk-based clean up standards to make its NFA determinations for AST sites, DTSC would like a notification in the deed to inform future land owners of the clean up criteria used at these sites. Please incorporate a new subsection in Section 7.0 titled "Notification - Aboveground Storage Tanks".

Please include the following statements, "Aboveground Storage Tanks (ASTs) were removed from an area that is in close proximity to Carve-Out Area 11 (CO-11) (portion of Parcel 1). Although the AST sites were not actually located in CO-11, CO-11 was affected by contamination from these sites. The clean up was conducted according to standards promulgated by the Regional Water

Quality Control Board, Santa Ana (RWQCB). The RWQCB uses water protection standards as its guidelines, in order to protect the quality of surface and subsurface water. These standards do not include a risk-based approach to clean up and therefore on a cases by case basis may not be as protective of human health and the environment as a risk-based approach to clean up may be."

"As a result of the standards utilized in the clean up at these AST sites, hazardous substances contained in petroleum products may have been left at the sites at levels that are not protective of human health."

Page 1, Title - The title should not read "Draft Finding of Suitability to Transfer". It should either read "Final Finding of Suitability to Transfer" or simply "Finding of Suitability to Transfer".

Page 1 - The heading for column 2 has a typographical error, but rather than correct the error, the more appropriate heading would be "DTSC Comments". The heading for column 3 should be "Navy Responses".

Page 1, Unresolved Comment #1 - The sentence beginning with, "DTSC understands that the DON..." should have been the beginning of a third paragraph.

Page 1, Unresolved Comment #1 - The sentence beginning with, "Therefore, without site-specific data..." is incorrect. DTSC made this comment previously in its December 12, 2002 comment letter (Comment #1), but the requested change was not incorporated. The comment was as follows:

As a point of clarification, CO-8 includes portions of Parcels 16, 27 and 40, however, Building 303 is only located on Parcels 27 and 40. For purposes of the unresolved comment regarding lead-based paint (LBP), the fourth sentence in paragraph 3 should read, "Therefore, without site-specific data, DTSC is unable to determine whether, pursuant to CERCLA 120(h)(3), all remedial actions have been taken at portions of Parcels 27 and 40 (portion of Carve-Out Area 8) with respect to potential releases of lead from LBP."